

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)	
)	
Program and System Information)	MM Docket No. 14-150
Protocol (PSIP) Designation for)	
Station WJLP(TV) (formerly KVVV(TV)),)	
Middletown Township, New Jersey)	
FCC Facility ID No. 86537)	

TO: Marlene H. Dortch, Secretary

For transmission to: The Commission

APPLICATION FOR REVIEW

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SUMMARY

The Video Division has issued two letter rulings with respect to the virtual channel which, in the Division's view, should be assigned to Station WJLP(TV), Middletown Township, New Jersey. The first, issued on October 23, 2014, purports to assign "virtual channel 33". The second, issued on Friday, November 7, 2014, announces that WJLP's program test authority is being suspended as of the next business day, November 10, 2014. Taken together, these letter rulings are demonstrably erroneous and must be reversed.

Station WJLP operates on over-the-air RF channel 3. It is a VHF station allotted to New Jersey in compliance with Section 331(a) of the Communications Act, the goal of which is to assure that each state has at least one VHF station allotted to it. The Video Division's assignment of "virtual channel 33" to WJLP would, if implemented, contravene that statutory goal by requiring the station to hold itself out to the public as a UHF station.

In fact, Station WJLP is absolutely entitled to a two-part virtual channel the major_channel_number of which is 3. ATSC A/65, Annex B – the only available source for direction on the designation of virtual channel numbers – expressly so provides. While WJLP's signal overlaps the signals of two other stations using major_channel_number 3 in the virtual channels, that does not preclude WJLP's use of the same major_channel_number. ATSC A/65 expressly provides that, where such overlap occurs, the solution is to partition the stations' minor_channel_numbers to avoid overlap of identical two-part channel numbers. WJLP has done precisely that, and its use of virtual channel 3.10 full complies with ATSC A/65. Since that is all that the Commission's rules require, any assignment of some alternate major_channel_number is contrary to ATSC A/65 and, therefore, contrary to the rules.

The Division's assignment of major_channel_number 33 is based on a misreading of one paragraph of ATSC A/65, Annex B. That misreading assumes multiple essential factual predicates that are plainly inaccurate, and it leads to nonsensical results plainly at odds with ATSC A/65.

Aside from its obvious substantive infirmities, the Division's suspension of WJLP's program test authority on one business day's notice is contrary to the Commission's rules and Section 316 of the Communications Act.

The Division's effort to impose a non-compliant virtual channel on WJLP reflects a regrettable selective enforcement because, as PMCM has previously demonstrated to the Division, in no fewer than 105 situations across the country, stations with identical two-part virtual channels have overlapping signals. The fact that this has been the case for years establishes that no harm arises from such situations, which do not comply with ATSC A/65. By contrast, WJLP's use of virtual channel 3.10 *does* comply with ATSC A/65, and yet the Division has opted not only to impose a non-compliant UHF major_channel_number on WJLP, but to do on a hyper-expedited basis when there exists no reason at all to change the station's virtual channel.

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1. Pursuant to Section 1.115 of the Commission's rules, PMCM TV LLC ("PMCM") hereby seeks review of (a) the letter ("First Division Letter"), DA 14-1528, released October 23, 2014, and (b) the letter ("Second Division Letter"), dated November 7, 2014. Both letters are from the Deputy Chief of the Media Bureau's Video Division ("Division") to, *inter alia*, counsel for PMCM. Copies of the letters are included as Attachments A and B hereto. As set forth below, to the extent that the First Letter may arguably be deemed to reflect any official action, that Letter is demonstrably contrary to the standards set out in Annex B to Advance Television Standards Committee A/65 ("ATSC A/65") and, therefore, contrary to the Commission's rules. And, in addition to violating the Communications Act and the rules, the Second Letter, to the extent that it purports to impose the erroneous terms of the First Letter on PMCM, is equally contrary to the standards set out in ATSC A/65.

QUESTIONS PRESENTED FOR REVIEW

2. This matter involves the determination of "virtual channels", *i.e.*, the two-part channel designation inserted by DTV stations into the Program and System Information Protocol ("PSIP") component of their transmitted signal. The Commission, in lieu of developing its own technical standards with respect to the designation of virtual channels, instead merely incorporated by reference into its rules technical standards adopted by the Advanced Television Standards Committee ("ATSC"). *See* Section 73.682(d), which requires that DTV stations comply with, *inter alia*, ATSC Document A/65 ("ATSC A/65"). Neither PMCM's license nor its outstanding construction permit includes any reference to any specified virtual channel.

3. The questions presented here are:

Where the Division appears to have reached a conclusion with respect to a virtual channel designation which is demonstrably contrary to the express terms of ATSC A/65 and which, if implemented by the station in question, would result in that station's non-

compliance with ATSC A/65 (and, therefore, the Commission's own rules), is not the Division's conclusion null and void *ab initio*?

Where a permittee has constructed the facilities as set out in its construction permit and has commenced operation pursuant to program test authority consistently with the terms of its construction permit, do not the Commission's rules preclude suspension of program test authority?

If the assignment, by the Division, of a major_channel_number to a station is deemed to constitute a modification of the station's license and/or construction permit, does not Section 316 of the Communications Act compel the Commission to afford the licensee or permittee at least 30 days in which to protest such proposed modification?

FACTORS WARRANTING COMMISSION CONSIDERATION

4. The conclusion reflected in the First Division Letter conflicts with ATSC A/65 and, therefore, Section 73.682(d), and the Second Division Letter's suspension of PMCM's program test authority is contrary to Section 73.1620(b) and/or Section 316 of the Communications Act.

INTRODUCTION

5. The two Division Letters at issue here together constitute the latest in a series of apparent efforts by the Division to stymie the ability of PMCM to realize the goal of providing New Jersey with its own VHF television station, a goal expressly mandated by Congress.¹ In addition to its initial rejection of PMCM's notifications in 2009, the Division has more recently taken the extraordinary step of relieving three major cable television systems of any obligation to carry PMCM's Station WJLP(TV), Middletown Township, New Jersey, for the indefinite

¹ For background concerning PMCM's efforts to avail itself of the opportunity created by Congress in Section 331(a) of the Communications Act, and the Commission's unsuccessful attempt to frustrate those efforts, see *PMCM TV LLC v. FCC*, 701 F.3d 380 (D.C. Cir. 2012).

future.² By its Letters the Division now purports to assign to WJLP a partial, non-VHF, virtual channel in direct contravention of ATSC A/65 and to suspend WJLP's program test authority unless and until PMCM agrees to utilize the non-compliant `major_channel_number` on which the Division is insisting.

6. As an initial matter, it must be noted that the First Division Letter does not appear to constitute an "action": it includes no express ordering provision and it specifies no action to be taken (or not to be taken) by PMCM. While the First Letter purports to "assign" to WJLP "virtual channel 33", the significance of that purported assignment is far from clear.

7. ATSC A/65 does not provide for any Commission involvement in the designation of virtual channels and the Commission has historically not engaged in the assignment of such channels: neither the application for an initial DTV construction permit nor the application for a DTV license requests any information about "virtual channels", and neither the construction permit nor the license of a DTV station specifies a "virtual channel".³ The First Division Letter tacitly acknowledges this when it states that, rather than the Commission, "the PSIP Standard^[4] assigns" WJLP-TV "virtual channel 33". First Division Letter at 3. In other words, the Division perceives the assignment of a virtual channel to be determined solely by the criteria set out in

² In a market where approximately 86% (or more) of households receive their television by cable or satellite, lack of cable carriage is the competitive kiss of death. By Application for Review filed on August 25, 2014, PMCM has sought Commission review of that action. PMCM's Application for Review is currently pending.

³ Essentially, virtual channel designation is a self-executing process carried out by each licensee in compliance with the provisions of ATSC A/65. By contrast, each station's Commission-issued license *does* specify the station's unique Transport Stream ID ("TSID") – presumably because the assignment of TSIDs by the Commission is expressly contemplated by the ATSC. *See* ATSC Standard: Content Identification and Labeling for ATSC Transport, ATSC A/57B at 7 ("The assigning authority for [TSIDs] for the United States is the FCC.").

⁴ We understand the Division's use of the term "the PSIP Standard" to refer to ATSC A/65.

ATSC A/65, and not by any separate and independent authority or standards devised by the Commission.

8. The Division's historical non-involvement in – and consequent unfamiliarity with – the assignment of virtual channels is reflected in the both Division Letters' repeated references to "virtual channel 33". The term "virtual channel" as used in ATSC A/65 refers to a two-part number consisting of a "major_channel_number" and a "minor_channel_number".⁵ As noted above, the Commission incorporated ATSC A/65 by reference into its rules and did not independently attempt to define such terms as "virtual channel". Thus, the only operative definition of "virtual channel" available is ATSC's, which contemplates a two-part number. The Division's reference to a "virtual channel" with only one part – *i.e.*, 33 – as opposed to two parts – *e.g.*, 33.1 – is meaningless.⁶

9. In light of the foregoing, it is not at all clear that the First Division Letter constitutes anything as to which Commission review can be sought. However, notwithstanding those considerations, the Division has, in the Second Division Letter, advised PMCM that the Division will suspend PMCM's authority to conduct program tests as of 12:00 p.m. on November 10, 2014, unless PMCM abandons use of major_channel_number 3 and instead uses major_channel_number 33. In light of the Second Division Letter's unlawful direction, it is clear that the two letters, taken together, are susceptible to Commission review. Moreover, in view of

⁵ See, *e.g.*, ATSC A/65 at 32 ("Each virtual channel shall be associated with a major and a minor channel number. The major channel number, along with the minor channel number, act as the user's reference number for the virtual channel."; 119 ("a user can tune to any virtual channel present in the Transport Stream by referring to the major and minor channel numbers").

⁶ While meaningless, the Division's reference to only a one-part number should not be unexpected. The Bureau does not appear to have any record of any station's minor_channel_number. Because of that, the Division is not in a position to identify any non-compliance with ATSC A/65.

the unlawful deadline imposed by the Second Division Letter – a deadline that afforded PMCM no more than one business day to react – immediate emergency consideration of the instant Application for Review is warranted and hereby requested.

BACKGROUND

10. PMCM's Station WJLP operates on over-the-air RF channel 3. It has operated on that channel for more than 10 years, *i.e.*, both since the June, 2009 DTV transition and, more importantly, long before then as an NTSC analog station. Because its NTSC RF channel at the time it commenced digital service was 3, ATSC A/65 mandates that WJLP use 3 as the `major_channel_number` component of its virtual channel.⁷ In compliance with that mandate, Station WJLP has used 3 as its `major_channel_number` continuously since the DTV transition.

11. Meredith Corporation ("Meredith") is the licensee of Station WFSB in Hartford, Connecticut. CBS Broadcasting, Inc. ("CBS") is the licensee of Station KYW-TV, Philadelphia. The service area of WJLP overlaps with those of WFSB (over Fairfield County in southwestern Connecticut) and KYW-TV (over portions of New Jersey). WFSB and KYW-TV each utilizes 3 as its respective `major_channel_number`. Because of the overlapping of these stations' signals, in compliance with ATSC A/65, Annex B, B.1.1 (5), PMCM has utilized the two-part virtual channel number 3.10 since commencing equipment and program test operation of WJLP with its Middletown Township, New Jersey facilities.

⁷ See ATSC A/65, Annex B, B.1.1 (1): "For a licensee with an NTSC license existing at the time it commences digital service, the `major_channel_number` for the virtual channels controlled by the licensee *shall* be set ... to the NTSC RF channel number existing at the time it commenced digital service." (Emphasis added.) We have emphasized "shall" in the quotation because, in ATSC A/65, use of that word "indicates specific provisions that are to be followed strictly (no deviation is permitted)." ATSC A/65 at 14.

12. Irrespective of PMCM's ATSC A/65-dictated partitioning of WJLP's minor_channel_number, Meredith and CBS have objected to PMCM's use of 3 as WJLP's major_channel_number. They do not dispute the correctness of PMCM's understanding of its obligations under Annex B, B.1.1 (1) – indeed, they don't even acknowledge either that understanding or that provision of Annex B. They claim that, in order to “avoid viewer confusion” and to allow them to “retain the equity and brand identification they have built on their channels”, the Commission should force WJLP to use “virtual channel 33 [sic]”.

13. In its First Letter the Division similarly does not acknowledge or address Annex B, B.1.1 (1). Instead, it responds that: (a) “The PSIP Standard does not provide for ... the sharing of virtual channels by licensees with overlapping contours that are not commonly owned”; and (b) “PMCM has no inherent right to use virtual channel 3 [sic] at this time, which is already used by WFSB(TV) and KYW-TV in areas that are also covered by WJLP-TV”. Division Letter at 3. On the basis of those two statements – both of which are incorrect – the Division purports to “assign station WLJP-TV virtual channel 33 [sic]” on at least an interim basis.

14. Despite the fact that the First Division Letter did not order PMCM to take any action at all, the Second Division Letter asserts that “station WJLP-TV is operating in a manner inconsistent with the [First Division Letter]”. Because of that, the Second Letter purports to suspend WJLP's program test authority effective 12:00 p.m. November 10, 2014.

15. There are multiple problems with the Division's position.

ARGUMENT

16. We begin with a discussion of the flaws in the First Division Letter. We will then address the serious ways in which the Second Division Letter contravenes both the Commission's rules and/or the Communications Act.

ATSC A/65 expressly permits the overlap of non-commonly-owned stations with common major_channel_numbers.

17. As noted above, the First Division Letter says that the "PSIP Standard does not provide for ... the sharing of virtual channels by licensees with overlapping contours that are not commonly owned." First Division Letter at 3. PMCM understands that sentence to mean that, in the Division's view, ATSC A/65 (*i.e.*, the "PSIP Standard") does not permit the sharing of a common major_channel_number (*i.e.*, "virtual channels") by non-commonly-owned stations whose signals overlap. If that is, indeed, what the Division meant to say, the Division is wrong, as its own letter demonstrates.

18. ATSC A/65, Annex B, B.1.1 (5) expressly contemplates that such overlapping of stations with common major_channel_numbers may occur. As paraphrased by the Division (at footnote 6 to its letter), that section:

provides that a broadcaster that owns or controls broadcast licenses on two or more different RF channels with overlapping service areas may use a common major (virtual) channel for the stations. The broadcaster may choose one of its RF channels as its major channel and the minor channel number fields must be [partitioned⁸] to insure that there is no duplication of the two-part channel number in the service area, ***including the overlapping service area of other broadcasters using the same major channel number.***

⁸ Annex B, B.1.1 (5) uses the word "partitioned". In paraphrasing that provision, the Division uses the word "portioned". PMCM assumes that that is merely an inadvertent typographical error further reflecting the Division's unfamiliarity with the specifics of ATSC A/65, Annex B.

(Emphasis added.) The emphasized language makes unmistakably clear that ATSC recognized that situations might arise in which the signals of separately-owned (*i.e.*, owned by “other broadcasters”) stations with “the same major_channel_number” might “overlap[]”. In other words, contrary to the Division’s claim, ATSC A/65 does indeed expressly “provide for” precisely such situations. The language of Annex B, B.1.1 (5) further demonstrates that, far from prohibiting such situations, ATSC A/65 specifies a simple prophylaxis: partition the stations’ respective minor_channel_numbers to insure no duplication of two-part virtual channel numbers. So the Division’s contrary assertion – which, oddly, appears in the text to which the footnoted language, above, is associated – is plainly wrong.

PMCM is obligated to utilize major_channel_number 3 in its two-part virtual channel.

19. As noted above, the Division also asserts that “PMCM has no inherent right to use virtual channel 3 at this time, which is already used by WFSB(TV) and KYW-TV in areas that are also covered by WJLP-TV”. First Division Letter at 3. But under the terms of ATSC A/65, Annex B, B.1.1 (1), not only does PMCM have an inherent right to use major_channel_number 3, but it is ***obligated*** to do so.

20. As indicated in Footnote 7, above, Annex B, B.1.1 (1) expressly mandates that, “[f]or a licensee with an NTSC license existing at the time it commences digital service, the major_channel_number for the virtual channels controlled by the licensee ***shall*** be set ... to the NTSC RF channel number existing at the time it commenced digital service.” (Emphasis added.) And also as indicated above, in ATSC A/65, the word “shall” “indicates specific provisions that are to be followed strictly (no deviation is permitted).” ATSC A/65 at 14. In other words, if the specified factual predicate applies, the licensee has no discretion: it must follow the dictate of

this section. Note also that B.1.1 (1) makes no reference whatsoever to the use of the same `major_channel_number` by any other station. So when the Division (in its First Letter) appends the observation that “virtual channel 3 ... is being used by WFSB(TV) and KYW-TV” to its incorrect assertion about WJLP’s “inherent right”, that observation is, at best, a *non sequitur*.

21. To be as clear as possible, WJLP commenced digital service in June, 2009. At that time it had an NTSC license (which it had held since 2002). Its NTSC RF channel number at the time it commenced digital service was 3. Given all those undeniable facts, ATSC A/65 requires that WJLP’s `major_channel_number` be set at 3. Since PMCM is expressly obligated to do so, PMCM plainly has an “inherent right” to do so.

No basis exists for the supposed assignment of major_channel_number 33 to WJLP.

22. The First Division Letter indicates that, in the Division’s view, WJLP should use `major_channel_number` 33. No basis whatsoever exists for that view.

23. It appears that, taking its cue from Meredith and CBS, the Division believes that ATSC A/65, Annex B, B.1.1 (4) might somehow apply here. By its own terms, however, that section does *not* apply here. Annex B, B.1.1 (4) reads:

If, after February 17, 2009, an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market, the newly-licensed DTV licensee shall use, as its `major_channel_number`, the number of the DTV RF channel originally assigned to the previous NTSC licensee of the assigned channel.

For that section to come into play, then, the following conditions must be met: (a) There must be a DTV licensee which has become “newly-licensed” since February 17, 2009; (b) that station must be operating on an RF channel “previously allotted for NTSC” in the “newly-licensed” station’s “market”; and (c) the “previously-allotted” channel in that “market” must have been used by some other licensee. None of those conditions is present here.

24. First, as noted above and as Commission records demonstrate, WJLP has been a licensed facility since 2002. Under no stretch of the imagination could it be deemed to have been “newly-licensed” after February 17, 2009, *i.e.*, the original statutorily-mandated date for the national DTV transition. Stations that were licensed prior to that date would perforce have been operating with NTSC facilities and would, as of the transition date, have determined their appropriate major_channel_number pursuant to Annex B, B.1.1 (1). ATSC’s specification of February 17, 2009 plainly signals that Annex B, B.1.1 (4) is intended to address the determination of major_channel_numbers for stations that did not exist prior to the transition. Since WJLP unquestionably existed prior to the transition, this first condition of B.1.1 (4) is not met.⁹

25. Second, for B.1.1. (4) to apply here, channel 3 would have to have been “previously allotted for NTSC” in WJLP’s “market”, *i.e.*, the New York DMA. As the

⁹ The First Division Letter acknowledges that, in PMCM’s view, WJLP is not a “newly-license station”, but the Division then provides the *non sequitur* response that the assignment of “virtual channel 33” to WJLP would be “consistent with the Division’s decision allotting channel 5 to Seaford, Delaware”. First Division Letter at 3, citing *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware, 25 FCC Rcd 4466 (Vid. Div. 2010)*. The *Seaford* case is inapposite here. In *Seaford*, the Division allotted a new vacant channel to Seaford in 2010, long after the June, 2009 DTV transition (and longer after the February, 2009 date specified in B.1.1 (4)); by contrast, no vacant channel is involved in the WJLP situation, WJLP having been continuously licensed to operate on RF channel 3 since 2002. And because the Seaford channel was newly-allotted, no station could claim that, under B.1.1 (1), it was required to use that RF channel as its major_channel_number; as discussed above, WJLP is clearly required, by B.1.1 (1), to use major_channel_number 3. Those two factors dispositively distinguish *Seaford* from the instant case. It should also be noted that, in *Seaford*, the Division appears to have utilized its flawed notion of “market” (discussed in the text above at Paragraphs 30-34), since the channel in the *Seaford* case had not previously been allotted for NTSC operation in the Seaford market. But because no party was in a position, in the *Seaford* allocation proceeding, to challenge the supposed assignment of a major_channel_number in obvious contravention of ATSC A/65, that assignment remains technically on the books.

Commission's records show, channel 3 was never allotted for any use, NTSC or otherwise, in the New York DMA prior to the DTV transition. So the second condition of B.1.1 (4) is not met.

26. Third, since there was no "previously-allotted" channel 3 in the New York DMA, there obviously was no NTSC station using that channel there. So the third condition is not met.

27. Despite the fact that none of the B.1.1 (4) conditions are satisfied here, the Division concludes that "the PSIP Standard" (by which the Division apparently means B.1.1 (4)) provides that WFSB's current RF channel should be assigned as WJLP's "virtual channel" (by which the Division presumably means "major_channel_number"). For that to be true, however, the Division would have to determine that WFSB is in the same market as WJLP. As quoted above, B.1.1 (4) provides that, where "an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market", then the newcomer is to use as its major_channel_number the "DTV RF channel originally assigned to the previous NTSC licensee of the assigned channel." In other words, B.1.1 (4) contemplates only one market in which a channel was: (a) assigned to a station for NTSC operation prior to the DTV transition; (b) then abandoned by that station for another channel (presumably in connection with the DTV transition); and (c) re-assigned, *after* the DTV transition, to a "newly-licensed station" in the same market.

28. But WFSB is *not* now, and has *never* been, in the market in which WJLP currently operates. WJLP is assigned to the Middletown Township, New Jersey, in the New York DMA. WFSB is now (and has at all relevant times been) assigned to Hartford, Connecticut, in the Hartford-New Haven DMA. There is therefore no basis in B.1.1 (4) to impose WFSB's RF channel number on WJLP.

29. The First Division Letter provides no explanation as to why WFSB's RF channel number might be appropriate for WJLP. The only logical explanation is that the Division for some reason believes that WJLP and WFSB are in the same "market" because their signals overlap. There are, however, multiple flaws in that belief.

30. First and most obviously, those two stations are *not* in the same market by the Commission's own definition of "market". The Commission's rules expressly define a television station's "market" as the station's Nielsen-defined DMA. Section 76.55(e)(2). Moreover, the Division's seeming inclination to define "market" by reference to contour overlap flies in the face of the fact that the Commission expressly abandoned precisely that approach in the context of multiple ownership analysis. *See, e.g., 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules*, FCC 03-127 (released July 2, 2003).

31. Second, nothing in ATSC A/65, Annex B suggests that the term "market" as used there is intended to mean anything other than "market" as defined by the Commission's rules. To the contrary, the language of ATSC A/65, Annex B demonstrates that the Division's apparent understanding – *i.e.*, that a "market" is determined by overlapping DTV service areas – is misguided. ATSC treats the term "Service Area" as a specifically-defined, capitalized, term which it uses repeatedly, each time in the context of *overlapping* service areas. But in B.1.1 (4), ATSC declines to use the term "overlapping Service Areas" and instead uses the word "market". ATSC clearly recognized the concept of overlapping Service Areas. Had it meant for B.1.1 (4) to apply to overlapping Service Areas – as the Division seems to believe – then ATSC would have used that term, or would otherwise have signaled its intention to treat "market" and "overlapping Service Areas" as somehow synonymous. It did not.

32. Third, the notion that overlapping signals define a “market” leads to nonsensical results. If a “market” is so-defined, then WFSB must be in the New York market as well as the Hartford-New Haven market, and WJLP must be in the Hartford-New Haven market as well as the New York market. If that were the case, then both of those stations – indeed, *all* stations in either of those markets – would be entitled to assert must-carry rights throughout *both* DMAs. A seemingly absurd notion, but a notion that necessarily flows from the Division’s apparent position.

33. And it gets worse. If the overlap of the signals of WFSB and WJLP gives rise to some new “market” encompassing both the Hartford-New Haven and New York DMAs, then the overlap of WJLP and KYW-TV must also give rise to a new “market” encompassing the New York and Philadelphia DMAs. But that logically leads to the conclusion that these overlaps create a mega-“market” that includes all three DMAs, *i.e.*, a market extending from well south of Philadelphia up to eastern Connecticut. An even more absurd notion, to be sure, but one that unquestionably flows from the Division’s apparent position.

34. Moreover, the Division’s suggested approach itself leads to results inconsistent with ATSC A/65. Since WJLP overlaps KYW-TV as well as WFSB, under the Division’s theory of channel assignment WJLP could be assigned as a major_channel_number the over-the-air RF number used by KYW-TV. But as reflected in the First Division Letter, that channel – 26 – is already used by another station in Connecticut, which would (under the Division’s approach) preclude use of that channel by WJLP. So the Division’s approach mandates a result that it also proscribes. The fact that its approach can – and does – lead to such a result underscores the incorrectness of that approach.

35. Plainly, then, Annex B, B.1.1 (4) has no applicability here at all.

36. In summary, the First Division Letter is both factually and legally wrong in its approach to ATSC A/65. The conclusion set out therein – that “virtual channel 33” should be assigned to WJLP – is contrary to ATSC A/65 and, therefore, contrary to the Commission’s rules.¹⁰ Since ATSC A/65 is, as described above, essentially self-executing without Commission involvement, and since PMCM is confident that two-part virtual channel 3.10 is completely consistent with ATSC A/65, and since the First Division Letter did not order PMCM to take any steps at all, WJLP has continued to utilize two-part virtual channel 3.10.

The Second Division Letter is Unlawful.

37. Apparently miffed that PMCM declined to utilize the non-compliant major_channel_number identified by the Division, the Division has, in its Second Letter, upped the ante by purporting to suspend – effective on one business day’s notice – WJLP’s program test authority until PMCM capitulates to the Division’s preferences. Aside from the fact that the Division’s continued insistence on a non-compliant major_channel_number (as discussed above) cannot be justified, the Division’s purported suspension, on its face, flatly violates either Section 73.1620(b) of the Commission’s rules and/or Section 316 of the Communications Act.

38. Section 73.1620(b) provides, in relevant part, that the Commission may “revoke, suspend, or modify program tests by any station ... for failure to comply adequately with all terms of the construction permit.” In other words, the sole basis on which program test authority may be suspended is “*failure to comply adequately with all terms of the construction permit*”. PMCM’s operation of WJLP in fact complies with all terms of the station’s construction permit.

¹⁰ It is also contrary to Section 331 of the Act because use of major_channel_number 33 would effectively convert WJLP to a UHF station in the public eye, completely defeating Congress’s goal of providing New Jersey its own identifiable VHF station.

Therefore, no lawful basis exists for the suspension of program test authority consistently with Section 73.1620(b).

39. It appears from the Second Division Letter that the Division may believe that a station's major_channel_number is an element of the station's construction permit – otherwise, as discussed in the preceding paragraph, there is no legitimate basis for the purported suspension. Any such belief on the Division's part, however, would be wrong. A construction permit contains no reference at all to any virtual channel number – nor does a station's license, for that matter, nor the application for construction permit nor the application for a license. In other words, PMCM's refusal to utilize major_channel_number 33 *cannot* constitute a “failure to comply” with the terms of WJLP's construction permit because the major_channel_number is *not* a term of the construction permit.

40. Since the Second Division Letter bases its purported suspension of WJLP's program test authority on that factor, it is clear that the purported suspension is contrary to Section 73.1620(b) and is, therefore, a nullity.¹¹

41. But let us assume that the Division is, *arguendo*, correct in its apparent belief that a station's major_channel_number is a component of its construction permit. In that case, the First Division Letter modified WJLP's permit because that permit had not, prior to the First

¹¹ Section 73.1620(d) admonishes that program test operation “shall be in strict compliance with the rules governing broadcast stations and in strict accordance with representations made in the application for license pursuant to which the tests were authorized.” Again, the only FCC rule relating at all to virtual channel designation is Section 73.682(d), which simply instructs that DTV stations must comply with ATSC A/65. As discussed above, WJLP's use of two-part virtual channel 3.10 fully complies with ATSC A/65. The Division's purported reassignment of WJLP's major_channel_number was not achieved through a formal rulemaking process and cannot itself be deemed a rule. Also as noted above, nothing in the application for a license refers in any way to virtual channel designations so, again, WJLP's use of channel 3.10 is not in any way inconsistent or non-compliant with any representations made in its license application.

Division Letter, included *any* major_channel_number at all, much less major-channel_number 33.

42. Modifications of construction permits are permitted by Section 316 of the Act, subject to specific constraints. In particular, the Act provides in relevant part that:

No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification.

47 U.S.C. §316.¹² So if the modification of WJLP's major_channel_number does constitute a modification of the station's construction permit (thereby getting the Division around its Section 73.1620(b) problem), the Second Division Letter violates the statute. The first written indication PMCM was given that WJLP's major_channel_number might be changed to 33 was the First Division Letter, on October 23, 2014 (although, again, that letter did not expressly state that the Division was thereby modifying WJLP's construction permit). Importantly, the First Division Letter did not include any direct order that PMCM take (or refrain from taking) any action, despite the fact that Section 316 expressly contemplates that modifications will be accomplished with an "order".

43. But even if the First Division Letter were generously deemed to constitute the notice required by Section 316, the Second Division Letter – which purports to make the supposed modification of the WJLP permit effective as of 12:00 p.m. on November 10 – obviously violates Section 316 by affording PMCM considerably less than the 30 days' opportunity to protest the modification. That is, if the first notice was given on October 23 – the

¹² The statute provides that a modification may be ordered to take effect in less than 30 days' notice "where safety of life or property is involved". No one has even suggested, much less attempted to demonstrate, the WJLP's operation with two-part virtual channel 3.10 threatens the safety of life or property.

date of the First Division Letter – then Section 316 guarantees PMCM at least until November 22 to submit a protest. In its apparent eagerness to bend PMCM to its arbitrary will, the Division has ignored the procedural constraints which the Act imposes on it. This the Division may not do.

44. Similarly, by purporting to assign WJLP a new major_channel_number, the Division is effectively attempting to impose an involuntary channel change on WJLP. But the Middle Class Tax Relief Act at Section 1452(g) expressly prohibits the Commission from involuntarily assigning a television station to a new channel prior to the Incentive Auction. That being the case, the Division's Letters constitute a substantive violation of the law as well.

***Undeniable facts undermine the Division's efforts to impose
major_channel_number 33 on WJLP.***

45. The Division, for reasons unknown to PMCM, is very obviously hell-bent on forcing WJLP to utilize the major_channel_number of the Division's choosing. Ostensibly the Division's insistence is based on the demonstrably erroneous premise that ATSC forbids overlapping stations with common major_channel_numbers. As discussed above, ATSC A/65, Annex B, B.1.1 (5) expressly contemplates, *with approval*, overlapping stations with identical major_channel_numbers, as long as the stations' minor_channel_numbers are partitioned to avoid overlapping stations with identical two-part virtual channel numbers. Since PMCM has adopted two-part channel number 3.10 for WJLP, that condition is satisfied and 3.10 fully complies with ATSC A/65.

46. What makes the Division's urgent obsession with WJLP's virtual channel number so odd is the fact that, as PMCM has previously demonstrated to the Division, no fewer than 105 situations currently exist across the country where stations with identical two-part virtual channel numbers have overlapping signals. That is, each of those 105+ situations is technically in violation of the express letter of ATSC A/65, and yet the Division has made no apparent effort to

bring any of them (much less all of them) in compliance. The Division's curious inattention to those situations stands in marked contrast to its treatment of PMCM. Agencies are, of course, expected to treat similar situations similarly – and yet, despite the fact that it was notified of the 105+ non-compliant situations weeks ago, the Division has taken no action with respect to them, even though it *has* sought to impose a non-compliant major_channel_number of WJLP summarily, in violation of Section 316. This regrettable selective enforcement signals that the Division may be motivated by considerations other than those it has publicly expressed.

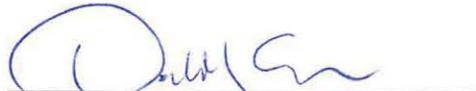
47. That is especially so in view of the fact that there is absolutely no evidence before the Division that even hints at, much less demonstrates, any harm of any kind to the viewing public that might arise from WJLP's use of 3.10 as its two-part virtual channel number. By contrast, forcing WJLP to modify that number would impose irreparable harm on PMCM, as detailed in the Emergency Motion for Stay being tendered simultaneously herewith. With substantial harm arising from one course, and zero apparent harm arising from the other, it is bizarre indeed that the Division is not only insisting on taking the former course, but also that it is doing so at a breakneck speed that flouts due process.

48. Which returns us to the fact that the Division Letters are the latest in a series of apparent efforts by the Division to stymie the realization of Congress's intent underlying Section 331 of the Act. PMCM fears that the Division bears it some animus which is prompting the Division to impose burdens and barriers where none should exist. The Division's wholesale disregard for the law and facts in the instant matter raises serious questions about the Division's willingness and ability to treat PMCM fairly. PMCM urges the Commission to take such steps as may be necessary to insure that PMCM is accorded the fair and even-handed consideration to which it is entitled but which it has plainly been denied here.

RELIEF SOUGHT

49. In view of all of the foregoing, the Commission should immediately reverse the Division Letters and order that PMCM's use of the two-part virtual channel number 3.10 in the operation of Station WJLP fully complies with the Commission's rules.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Donald J. Evans", is written over a horizontal line.

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November 10, 2014



Federal Communications Commission
Washington, D.C. 20554

DA 14-1528
Released: October 23, 2014

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Re: PMCM TV, LLC
WJLP-TV, Middletown Township, NJ
File Nos. BPCDT-20130528AJP and
0000001037
Facility ID No. 86537
Docket No. 14-150

Counsel:

PMCM TV, LLC (PMCM) is the permittee of station WJLP-TV (formerly KVVN(TV)), RF channel 3, Middletown Township, New Jersey. As discussed below, we hereby assign station WJLP-TV virtual channel 33 for use on an interim basis.

Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut had filed an informal objection to PMCM's above-referenced application for a construction permit for the station, objecting solely to PMCM's future operation on virtual channel 3, the same virtual channel used by WFSB(TV). The staff dismissed the informal objection as premature, stating that "an objection to virtual channel designations is customarily considered after grant of the license modification application in a separate proceeding that solely addresses the virtual channel designation."¹ By Public Notice released September 12, 2014, the Media Bureau sought comment on (1)

¹ April 17, 2014 Letter from Hossein Hashemzadeh, Deputy Chief, Video Division to PMCM TV, LLC, available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=49395.

a request for a Declaratory Ruling by Meredith that WJLP-TV be assigned virtual channel 33 and (2) an "Alternative PSIP Proposal" by PMCM requesting that WJLP-TV be assigned a two-part virtual PSIP channel 3.10 (with any additional streams eventually transmitted as 3.11, 3.12, etc.) while WFSB(TV) would retain virtual channel 3.1 through 3.9.² Comments were due by October 14 and reply comments are due October 29, 2014.

By letter dated September 29, 2014, PMCM, through its counsel, notified the Commission that it had completed construction of the above-referenced facilities and was commencing equipment tests as of that date. On October 3, 2014, Meredith, ION Media License Company (ION) and CBS Broadcasting Inc. (CBS) (collectively the Joint Parties) made a joint filing stating that as of September 30, 2014, PMCM "has commenced program-length commercial programming and network (ME-TV) programming identifying itself as 'Channel 3' and using virtual channel 3.10, which it can only use if it obtains a waiver that the Commission has never issued." The Joint Parties further request that the Media Bureau "immediately notify [PMCM] that any further equipment or program tests initiated by [WJLP-TV] . . . must use virtual channel 33 pending final action by the Commission in [MB Docket No. 14-150]."

According to the Joint Parties, Meredith station WFSB(TV) and CBS station KYW-TV, RF channel 26, Philadelphia, Pennsylvania, both operate with virtual channel 3 and have contour overlap with WJLP-TV; ION's station WPXN-TV, New York, New York, is carried on channel 3 on Cablevision cable systems in the New York DMA. The Joint Parties assert that "a principal purpose for the Commission's adoption of the PSIP Standards for assignment of digital virtual channels to market newcomers [such as WJLP-TV] was to avoid viewer confusion and to permit incumbent stations such as Meredith's WFSB, CBS's KYW, and ION's WPXN to retain the equity and brand identification they have built on their channels over many years." The Joint Parties further assert that because PMCM's station is being newly licensed in the market, it "has no existing identification with virtual channel 3 among its potential viewers" and "[r]equiring [WJLP-TV] to use virtual channel 33 for equipment and program tests thus would not harm [WJLP-TV] or engender viewer confusion."

PMCM filed a response on October 7, 2014, suggesting that its use of virtual channel 3.10 is consistent with the Media Bureau's July 25, 2014 letter ruling waiving section 76.64(f)(4) of the rules, 47 C.F.R. § 76.64(f)(4), to allow certain MVPDs to defer implementing the must-carry request and channel position election of PMCM for WJLP-TV until 90 days after the date of a final decision on WJLP-TV's virtual channel.³ According to PMCM, that letter observed that the PSIP Standard is meant to "guarantee that the **two-part** channel number combinations used by a broadcaster will be different from those used by any other broadcaster with an overlapping service area," and that by adopting a major/minor channel number "that is *different* from Meredith's 3.1 channel," PMCM is complying with the Media Bureau's directive.⁴ The Bureau's letter decision, however, did not address the merits of the appropriate virtual

² *Media Bureau Seeks Comment on Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for KVVN(TV), Middletown Township, New Jersey*, Public Notice, MB Docket No. 14-150 (rel. Sept. 12, 2014). As explained at n.1 of the Public Notice, a station's RF channel is the channel allotted to the station's community in the Post-Transition Table of DTV Allotments, 47 C.F.R. § 73.622(i). A station's virtual channel number is the number that the PSIP Standard attaches to a broadcaster's current DTV RF channel number regardless of the actual RF channel used for DTV transmission. It is the channel number that television viewers physically tune to in order to view a television station. Section 73.682(d) requires digital broadcast television signals to comply with ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006") ("PSIP Standard"). 47 C.F.R. § 73.682(d) (incorporated by reference, *see* § 73.8000).

³ *Letter to Tara A. Corvo, Esq. from William T. Lake, Chief, Media Bureau*, 29 FCC Rcd 9102 (MB 2014).

⁴ *See* October 7, 2014 Letter from Donald J. Evans, Esq. to Marlene Dortch at 2, para. b (emphasis in letter).

channel for WJLP-TV and PMCM's proposal to bifurcate channel 3 was first raised informally with the Bureau in a subsequent meeting with the staff. Accordingly, the Bureau's letter cannot be read as sanctioning PMCM's use of virtual channel 3.10.⁵

The PSIP Standard does not provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned,⁶ and we have not yet ruled on PMCM's "Alternative PSIP Proposal." Because PMCM has no inherent right to use virtual channel 3 at this time, which is already used by WFSB(TV) and KYW-TV in areas that are also covered by WJLP-TV, we believe it appropriate that WJLP-TV operate with the virtual channel assigned under the PSIP Standard while we consider PMCM's "Alternative PSIP Proposal" in MB Docket No. 14-150.

Annex B, Section 1.4 of the PSIP Standard states that:

If, after the transition, a previously used NTSC RF channel in a market is assigned to a newly-licensed DTV broadcaster in that market, the newly-licensed DTV broadcaster shall use, as his channel number, the number of the DTV RF channel originally allocated to the previous NTSC licensee of the assigned channel.

Therefore, the PSIP Standard assigns WJLP-TV, as a newly licensed station,⁷ virtual channel 33, which is WFSB(TV)'s RF channel.⁸ While PMCM argues that it is not a "newly licensed" station in the market because it was operating on NTSC channel 3 in Ely, Nevada prior to moving the station to New Jersey pursuant to section 331(a) of the Communications Act,⁹ our assignment of virtual channel 33 to WJLP-TV on an interim basis is consistent with the Division's decision allotting channel 5 to Seaford, Delaware pursuant to section 331(a) of the Act.¹⁰ There, the proposed allotment had contour overlap with WTTG(TV), RF channel 36, virtual channel 5, Washington, D.C. and the Seaford allotment was assigned virtual channel 36, which is WTTG(TV)'s RF channel.¹¹

We acknowledge that PMCM has raised a number of arguments why it should not be required to use virtual channel 33. In addition, the Commission may grant exceptions to the PSIP Standard on a case-by-case basis.¹² We emphasize that our interim assignment of virtual channel 33 for use by WJLP-

⁵ The remainder of the arguments in PMCM's October 7 response have been raised in connection with Docket 14-150 and will be addressed in that proceeding.

⁶ Annex B.1(5) of the PSIP Standard provides that a broadcaster that owns or controls broadcast licenses on two or more different RF channels with overlapping service areas may use a common major (virtual) channel for the stations. The broadcaster may choose one of its RF channels as its major channel and the minor channel number fields must be portioned to insure that there is no duplication of the two-part channel number in the service area, including the overlapping service area of other broadcasters using the same major channel number.

⁷ PMCM filed the above-referenced application for a license to cover the construction of WJLP-TV on October 14, 2014.

⁸ As noted above, WJLP-TV also has contour overlap with KYW-TV which operates on RF channel 26. That channel however, is not available for use by WJLP-TV because it is the RF and virtual channel of WHPX-TV, New London, Connecticut which has contour overlap with WJLP-TV.

⁹ 47 U.S.C. § 331(a).

¹⁰ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, MB Docket No. 09-230, Report and Order, 25 FCC Rcd 4466 (Vid. Div. 2010)(subsequent history omitted).

¹¹ *Id.* at 4472, para. 15.

¹² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18346, para. 153 (2004).

TV is without prejudice to these pending arguments and PMCM's "Alternative PSIP Proposal" to use virtual channel 3.10, which will be considered after the pleading cycle has closed on that proposal and Meredith's request for declaratory ruling.

Sincerely,

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
Frederick W. Giroux, Esq.
Seth A. Davidson, Esq.
William LeBeau, Esq.



Federal Communications Commission
Washington, D.C. 20554

November 7, 2014
(Service via Email)

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Re: PMCM TV, LLC
WJLP-TV, Middletown Township, NJ
File Nos. BPCDT-20130528AJP and
0000001037
Facility ID No. 86537
Docket No. 14-150

Counsel:

PMCM TV, LLC (PMCM), the permittee of station WJLP-TV (formerly KVVN(TV)), RF channel 3, Middletown Township, New Jersey, is presently operating pursuant to program test authority.¹ For the reasons discussed below, we are suspending program test authority effective 12:00 pm, EST, November 10, 2014.

By letter released October 23, 2014 (October 23 Letter), the Video Division assigned station WJLP-TV virtual channel 33 for use on an interim basis while the Media Bureau sought comment on (1) a request for a Declaratory Ruling by Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut, that WJLP-TV be assigned virtual channel 33 and (2) an "Alternative PSIP Proposal" by PMCM requesting that WJLP-TV be assigned a two-part virtual PSIP channel 3.10 (with any additional streams eventually transmitted as 3.11, 3.12, etc.), while

¹ By letter dated September 29, 2014, PMCM, through its counsel, notified the Commission that it had completed construction of the above-referenced facilities and was commencing equipment tests as of that date.

WFSB(TV) would retain virtual channels 3.1 through 3.9.² The Division assigned WJLP-TV virtual channel 33 on an interim basis after being informed by Meredith, ION Media License Company (ION)³ and CBS Broadcasting Inc. (CBS)⁴ (collectively the Joint Parties) that as of September 30, 2014, PMCM “has commenced program-length commercial programming and network (ME-TV) programming identifying itself as ‘Channel 3’ and using virtual channel 3.10, which it can only use if it obtains a waiver that the Commission has never issued.”⁵ In so doing, the Division acknowledged that PMCM has raised a number of arguments why it should not be required to use virtual channel 33, and the Division emphasized that the interim assignment of virtual channel 33 for use by WJLP-TV was without prejudice to consideration of these pending arguments and PMCM’s “Alternative PSIP Proposal” to use virtual channel 3.10, which would occur after the pleading cycle has closed on that proposal and Meredith’s request for declaratory ruling.⁶ By letter dated November 4, 2014, the Joint Parties notified the Commission that WJLP-TV continues to operate on virtual channel 3.10, in violation of the Commission’s rules and the Division’s October 23 Letter. The Joint Parties submitted a photograph of the WJLP-TV programming aired on November 4 at 10:32 am, showing that the station was operating with virtual channel 3.10. The New York Field Office of the Enforcement Bureau has confirmed that WJLP-TV was still operating with virtual channel 3.10 as of 9:09 am, November 7.

Upon completion of construction of a facility authorized in its construction permit, a permittee may operate the facility pursuant to program test authority, provided that an application for a license to cover is filed within 10 days, and program test authority is automatically terminated by final determination upon the license application.⁷ The granting of program test authority, however, should not be construed as approval of the license application,⁸ and the Commission “reserves the right to revoke,

² Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Donald J. Evans, Esq., DA 14-1528 (rel. Oct. 23, 2014), available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=53948. Comments and reply comments were due by October 14 and October 29, 2014. See *Media Bureau Seeks Comment on Request for Declaratory Ruling by Meredith Corporation and “Alternative PSIP Proposal” by PMCM TV, LLC for KVVV(TV), Middletown Township, New Jersey*, Public Notice, MB Docket No. 14-150 (rel. Sept. 12, 2014).

³ ION is the licensee of station WPXN-TV, New York, New York, which is carried on channel 3 on Cablevision cable systems in the New York DMA.

⁴ CBS is the licensee of KYW-TV, RF channel 26, virtual channel 3, Philadelphia, Pennsylvania, and has contour overlap with WJLP-TV.

⁵ The Joint Parties further requested that the Media Bureau “immediately notify [PMCM] that any further equipment or program tests initiated by [WJLP-TV] . . . must use virtual channel 33 pending final action by the Commission in [MB Docket No. 14-150].”

⁶ Section 73.682(d) of the Commission’s rules requires digital broadcast television signals to comply with ATSC A/65C (“ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006”) (“PSIP Standard”). 47 C.F.R. § 73.682(d) (incorporated by reference, see § 73.8000). As explained in the Division’s October 23 letter, the PSIP Standard does not provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned, and that because the Division had not yet ruled on PMCM “Alternative PSIP Proposal,” PMCM currently had no inherent right to use virtual channel 3 where it was already used by WFSB(TV) and KWWY-TV. Annex B, Section 1.4 of the PSIP Standard would assign WJLP-TV, as a newly licensed station, virtual channel 33, which is WFSB(TV)’s RF channel, and the Division further explained that its assignment of virtual channel 33 on an interim basis was consistent with its previous interpretation of the PSIP Standard in a similar case. See October 23 Letter at 3.

⁷ 47 C.F.R. § 73.1620(a)(1), (c).

⁸ 47 C.F.R. § 73.1620(e).

suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit . . .”⁹

Because station WJLP-TV is operating in a manner inconsistent with the Division’s October 23 Letter directing the station to use virtual channel 33 on an interim basis, WE HEREBY SUSPEND PROGRAM TEST AUTHORITY for the operation of WJLP-TV, Middletown Township, New Jersey, effective 12:00 pm, EST, November 10, 2014. Continued operation of the station after 12:00 pm, EST, November 10, 2014, and prior to issuance of a letter by the Division reinstating program test authority, will be considered an unauthorized operation of the station and will result in the institution of a forfeiture or other proceeding to enforce compliance. The Division may issue a letter reinstating program test authority upon notification, supported by the declaration, under penalty of perjury, of one of PMCM TV LLC’s principals, that it will operate WJLP-TV using virtual channel 33 on an interim basis, as specified in the Division’s October 23 Letter. Any notification should be filed with the Office of the Secretary and an electronic copy also should be sent to Hossein.Hashemzadeh@fcc.gov, Joyce.Bernstein@fcc.gov and Kevin.Harding@fcc.gov.

Sincerely,



Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
Frederick W. Giroux, Esq.
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William LeBeau, Esq.
Stephen Maguire/District Director/NY Field Office

⁹ 47 C.F.R. § 73.1620(b). The rule further provides that “All operation under program test authority shall be in strict compliance with the rules governing broadcast stations . . .” *Id.* at (d).

CERTIFICATE OF SERVICE

I, Donald J. Evans, hereby certify that on this 10th day of November, 2014, I caused copies of the foregoing "Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid and/or, as noted below, sent by electronic mail to the following:

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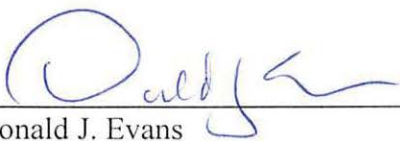
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